IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03/12/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.10483 OF 1997
and
W.M.P.NO.16740 OF 1997

M/s. Brescon Financial Services Ltd.,
33, Atlanta Nariman Point,
Mumbai 400 021.
Rep. by its Assistant Vice President .. Petitioner

-Vs-

1. The Government of Tamil Nadu,
rep. by its Secretary,
Revenue Department,
Fort St. George, Chenai 9.

2. State Industries Promotion
Corporation of Tamil Nadu Ltd.,
19-A, Rukmani Lakshminpathy Road,
Egmore, Chennai 8.
Rep. by its Managing Director

3. Tamil Nadu Electricity Board,
800, Anna Salai, Chennai 2. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.Rangarajan & Prabhakaran

For Respondent-1: Mr.G. Kavitha
Respondent-2 : Mr.P.S. Seetharaman
Respondent-3 : Mr.G. Vasudevan
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:J U D G M E N T

The petitioner has filed the present writ petition for issuing writ of certiorarified mandamus for quashing the records relating to letter dated

13.11.1996, issued by the second respondent, and for issuing a direction to the respondents to grant subsidy to the petitioner.

2. Respondent No.1 is the Government of Tamil Nadu, Respondent No.2 is the State Industries Promotion Corporation of Tamil Nadu Limited (hereinafter referred to as SIPCOT) and Respondent No.3 is the Tamil Nadu Electricity Board. Respondent No.1 in order to encourage setting up of Wind Electric Generator to generate electricity in the State had announced various incentives / schemes. Accordingly, by G.O.Ms. No.306 dated 22.5.1989, an order was issued by the Government, the relevant portion of which is to the following effect: 4. The Committee also recommended that a Special subsidy should be offered for certain industries to be set up anywhere in the State. The Government accept the recommendation and direct that a special subsidy of 10%, subject to a maximum of Rs.15.00 lakhs will be made available

(to medium and major industries to be set up anywhere in the State.) for the following groups of industries set up any where in the State : (1) ... (2) ... (3) Solar Energy Equipment (4) to (9) ...

The second respondent, which has been established in 1971 by the State as a catalyst in the development of medium and large scale industries in Tamil Nadu, had issued a brochure highlighting various schemes. The package of incentives highlighted by Respondent No.2 included the following : 5. SPECIAL SUBSIDY FOR SELECTED CATEGORY OF INDUSTRIES: A Special Subsidy of 10% on fixed assets subject to a ceiling of Rs.15 lakhs is available to Medium and Major industries for the following selected categories set up anywhere in Tamilnadu. i. ... ii. ... iii. Solar Energy Equipment and other Non-conventional energy devices. iv to ix ... In case of Small Scale Industries in the above line of manufacture, the Subsidy will be at 20% on fixed assets subject to a ceiling of Rs.15 lakhs.

The information booklet for the setting up of Wind Electric Generator in private sector issued by Respondent No.3 also indicated about the subsidy given by the Government of Tamil Nadu upto 10% of the project cost subject to maximum limit of Rs.15 lakhs. The petitioner with a view to set up Wind Electric Generator with total capital outlay of Rs.266.45 lakhs entered into a tie up with the third respondent, under which the electricity so generated by the petitioner would be purchased by the third respondent. Accordingly, the petitioner had installed a Wind Electric Generator in Gudimangalam village of Coimbatore district, which was commissioned on 31.3.1996 with a capacity of 550 KW. Electricity so generated was being sold to the third respondent as per the power purchase agreement dated 27.3.1996. Thereafter, the petitioner filed application before the second respondent for sanction of the special subsidy as per the incentives declared by the respondents 1 and 2 and even highlighted by the third respondent. Such application was rejected by the second respondent, and the reply dated 13.11.1996 was sent indicating that subsidy is not available to the petitioner as the electricity generated by the petitioner was not being used by the petitioner itself, but being sold to the Electricity Board. Thereafter the present writ petition has been filed.

3. Separate counter affidavits have been filed by the Respondents 2 and 3. Respondent No.3 in its counter affidavit has merely indicated the fact that Wind Electric Generator has been set up by the petitioner and the electricity generated is being sold to the Board. It has been further stated that the booklet issued by the Board only contains the information for the establishment of Wind Farm in private sector and the subsidy application is solely processed by SIPCOT as per their Rules and Regulations and the Board is not connected in the matter relating to grant of subsidy.

4. In the counter affidavit filed on behalf of the second respondent, while not denying about the issuance of brochure highlighting the special subsidy for the category of industries, it has been indicated that the application of the petitioner was rejected as the electricity generated was not being consumed by the petitioner itself. It is stated:-

4. ... The Standing Committee in the meeting held on 21.12.1994 observed that Wind Mill Subsidy can only be given to Industries and it cannot be extended to Transport Companies, Finance Companies, etc. It is pertinent to refer here that the Standing Committee on Incentives for Industrial Promotion is the apex body for taking decision in respect of policy matters relating to incentives....

It has been further indicated :

(c) The Booklet issued by this respondent contained only abstract of the various policies. It is also mentioned in the brochure that De given in this Brochure are information and guidance only. Forrther clarification, interpretation, readers are advised to contact SIPCOT.

It is also indicated in the counter that the order is based on the Government Policies decision taken by the Standing Committee on incentives for industrial promotion.

5. Even though counter has not been filed on behalf of Respondent No.1, it has been submitted at the time of hearing by the counsel representing Respondent No.1 that the Wind Mill subsidy for manufacturers and users of solar energy equipments had been stopped as per G.O.Ms.No.79 dated 17.3.1997.

6. There cannot be any doubt that SIPCOT, which is an instrumentality of the first respondent, had highlighted about the subsidy available in its brochure. Obviously such brochure was based on G.O.Ms.No.3 06 dated 22.5.1989, the relevant portion of which has already been extracted. As per the aforesaid G.O., subsidy will be made applicable to medium and major industries to be set up anywhere in the State. Entry No.3 relates to solar energy equipment. It is no where indicated that an entrepreneur setting up a solar energy equipment for the purpose of generating electricity is entitled to such subsidy only if such energy is consumed by such entrepreneur in his own industry. As a matter of fact similar facility has been extended by the

Government by G.O.Ms.No.562 dated 19.8.1989 in respect of Small Scale Industries. In such Government order also there is no indication that such subsidy is available only to the entrepreneur who consume the electricity produced by itself by setting up solar energy equipment. It is of course true that the Government had also extended such benefit to the units using Solar energy. However, no where it has been indicated by the Government in its various G.Os that such subsidy is not available to entrepreneurs, who generate electricity by setting up solar energy equipment, if such electricity is sold to the Electricity Board. It is of course true that in the Committee of SIPCOT such a decision had been taken, but unfortunately, however, the SIPCOT has not indicated about such aspect in the brochure issued by itself.

7. Learned counsel appearing for the second respondent in the course of hearing has submitted that in the brochure it has been indicated at Page No.17A as follows:

Details given in this brochure are for information and guidance only. For further clarification/ interpretation, readers are advised to contact SIPCOT.

8. The above note appended almost at the fag end of the brochure does not give fair indication that the incentives highlighted in paragraph 5 was subject to a condition that such incentives would be only available to the users and not to the entrepreneurs who set up solar energy equipment for generating electricity. In the brochure, there is no reference to the Committee decision. The decision taken by the Committee is only an internal matter of the SIPCOT and unless such matter is highlighted, an entrepreneur will not be expected to go through each decision taken by such Committee. An entrepreneur is supposed to be guided by the brochure issued and not by any decision of a Committee which forms part of the minute book of the SIPCOT, but does not see the light of the day through any other means. Moreover, as already indicated the G.Os issued from time to time have not made any distinction on this aspect. It is of course true that subsequently in March, 1997, such incentives had been withdrawn. However, in the present case, admittedly the industry has been set up in 1996, before the incentives had been withdrawn by the Government.

9. For the aforesaid reasons, I am not inclined to accept the submissions made on behalf of Respondent No.2. The contentions made by the petitioner being acceptable, the writ petition is allowed and the impugned letter issued by the Respondent No.2 is quashed and the Respondent No.2 is directed to disburse the amount within a period of ninety days from the date of communication of this order. Consequently, WMP.No.16740 of 1997 is closed. There would be no order as to costs.

Index : Yes

Internet: Yes

To

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